garage you're supposed to go to the door, let them know what's going on?

A At a certain point, yeah. That -- that's after going to the house a couple times if you don't see it. If you don't have any other means of getting the vehicle. But basically the bottom line of it is the bank wants their vehicle picked up whatever means necessary. And I -- and I mean that as far as whether it's at their place of employment, house.

Q In this case you were planning on getting it from the place of employment of Denise, right?

A Yes.

Q And that didn't work out because Mr. Richards (sic) was driving the car?

A That's right.

Q And so you followed him home?

A Correct.

Q Now you'd been to the residence before, hadn't you?

A Yes.

Q When were you at the residence before?

A The day before.

Q The day before, okay. You were also at her place of employment the day before?

A That's correct.

Q On the day before the 22nd, did you knock and request any at

-- at that point in time?
A No.
Q You didn't --
A Because I did not see the vehicle.
Q -- okay. Could you tell whether they were home or not?
A The day before?
Q Yeah?
A The day before I believe that she was out in her front yard earlier in the morning.
Q Was the garage door open at that point in time?
A No.
Q All right. So you didn't know whether the vehicle was there or not?
A That's correct.
Q All right. So even -- even though that's what the bank requires you to do when the -- a vehicle is parked in the garage, you didn't do that in this case?
A It's discretion if -- if the vehicle is there. In this case it -- if it was being parked in the garage we wanted to give it one more shot to see if she was going to drive it to her place of employment to get it there. If we were going to be unable to obtain it at her place of employment we would have followed up and went back to her house or went to her place of employment and demanded the vehicle, even though it's not present.

Q Now let me just for my own curiosity sake, how do you get -
- do you get paid by the vehicle or by the hour?
A Yes.
Q By the vehicle?
A Yes.
Q So it matters that you obtain every vehicle that you're contracted to repossess?
A That's correct.
Q All right. Otherwise you don't stay in business, right?
A Correct.
Q How many other people do you employ, is it just you and your partner or is it --
A Well at the time we had approximately six other people.
Q -- do they go out as partners in cases like that?
A Yes.
Q The -- you said that you had your wife with you, right?
THE COURT: You have to say yes or no for the Record please.
THE WITNESS: Yes.
THE COURT: Thank you.
BY MR. KOZAK:
Q And your daughter with you?
A Yes.
Q Not usually policy to have your daughter with you?
A Not usually, correct.

E
X
H
I
B
I
T

3

# EXHIBIT 3

STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN

File No. 2010-233526-FH

v

KIMDON BRUCE PETERS,

Defendant.

_______________________________/

JURY TRIAL, VOLUME II of II

BEFORE THE HONORABLE MARTHA ANDERSON, CIRCUIT COURT JUDGE

Pontiac, Michigan - Tuesday, April 5, 2011

APPEARANCES:

For the People:

**SYDNEY TURNER (P46641)**
Oakland County Prosecutor's Office
1200 N. Telegraph Road
Pontiac, MI 48341
(248) 858-0656

For the Defendant:

**SCOTT KOZAK (60099)**
44648 Mound Road, Suite 802
Sterling Heights, MI 48314
(586) 484-1011

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

Q You're also assuming that he was able to see the order -- read the order in your hand at that point in time, correct?
A Not from far away that he was.
Q Now when you -- you're still star -- you continued to approach the garage at this point, correct?
THE COURT: You have to say yes or no please.
THE WITNESS: Yes.
THE COURT: Thank you.
BY MR. KOZAK:
Q And you actually got to the garage and you still have this hand -- this order in your hand?
A Yes.
Q And nothing has happened at this point in time?
A That's correct.
Q Okay. The -- you got to a point where you were actually inside the garage, fair enough?
A Halfway, yes.
Q Okay, half --
A Body wise, step in, step out underneath the garage door.
Q -- okay. To the point where the garage door actually came down on your?
A On my shoulder.
Q Your shoulder, okay. So you crossed that threshold, right?
A Yes.
Q All right. That's when -- how long were you standing there

E
X
H
I
B
I
T

4

# EXHIBIT 4

PAR #
1138277

[illegible]
Carmel, Indiana 46032
(800) 237-2886 Fax (317) 843-3601
www.parnorthamerica.com

# Repossession Assignment

Great Lakes Rec - 239 -     Repo Fax# [illegible]

| Primary | | Cosigner | |
|---|---|---|---|
| Name | PETERS, DENISE M | Name | |
| Address | [redacted] | Address: | |
| City St Zip | | City St Zip. | |
| Phone | | Phone | |
| SSN | | SSN. | |
| DOB | | DOB | |
| **Employer** | | **Employer** | |
| POE: | SEARS/KMART | POE. | |
| POE Address | [redacted] | POE Address. | |
| City St Zip | | City St Zip. | |
| POE Phone | | POE Phone. | |
| Lienholder: | FINB AUTO | Balance: | $13,332.85 |
| Account # | [redacted] | Pmt Amt. | $289.56 |
| VIN #. | | Past Due: | $289 56 |
| Description: | 2005 GMC Canyon | Late Charges: | |
| Color: | Plate # | Key Code | |

Foshwon?

Assignment Type Invol

**PER HUNTINGTON SKIP Verified maker cuff ently works for SEARS HOLDINGS CORP. 1100 SROCHESTER RD ROCHESTERHILLS,MI 48307,248-218-2600/ ALL INFO IS GOOD AND VERIFIED/ Last Contact. 5/23/10/SS# search on lexnex shows given / per notes--ok to tt KBMON--appears to be screening all calls for maker / INS was cancelled aswell as they are disputing FIB as lien holder on contract /

Out of area Mileage, Vehicles Found at Impound and Other Such Requests Must Be Called Into PAR Immediately. Do Not Key a Request on the Web as an Update!!!!!!

REPO ON SIGHT - NOTIFY PAR IMMEDIATELY UPON RECOVERY OF UNIT -- SEND ACTIVITY UPDATES EVERY THREE DAYS TO PAR. SEND CONDITION REPORT, PICTURES, AND A LIST OF PERSONAL PROPERTY TO PAR WITHIN 24 HOURS OF THE TIME OF REPO! ALL IMPOUND RECEIPTS MUST BE ATTACHED TO CR. IF YOU HAVE ANY QUESTIONS PLEASE CALL PAR AT 1-800-237-2886.

Thursday, August 19, 2010 04:18:33

# Repossession Agreement

If any of the above information is incorrect or there are any additional fees, then please contact PAR North America immediately.

If this assignment is worked, then

**Great Lakes Rec - 239 - Royal Oaks MI**

has accepted this agreement and no additional fees will be paid without approval from a manager at PAR North America.

This unit will be going to

**NON ASSIGNED ACCOUNT**

upon recovery of the unit.

Do not take unit to auction without contacting PAR North America.

E
X
H
I
B
I
T

5

# EXHIBIT 5

COUNTY OF OAKLAND

# OFFICE OF THE SHERIFF

MICHAEL J. BOUCHARD

## STATEMENT

Complaint #: 16-55138

Date & Time: 6-23-10 1745 HRS

Date of Birth: [redacted]

Name: Michael Poissant

Social Security Number: [redacted]

Drivers License Number: [redacted]

City/State/ZIP: [redacted]

Address: [redacted]

Home Ph: [redacted] Work: [redacted] Email:

Statement: we waited at Place of Employment Sears on Pontiac Rd we found out she started at 5PM we seen unit Pull up to front doors and Drop them off and Then Truck Pulled away we followed to home add 2391 Caleb st and As he Pulled In the Garage Door opened and he Pulled the unit in at that time I pulled in the street and as I Approached garage I yelled Repossession agent and hold paper work he looked at me and pulled what appeared to be a 40 caliber and pointed it at my face and I leave or I will shoot you Immediately I turned around and said ok I'm leaving he followed me all the way up to my vehicle still yelling I will shoot you then we left and called 911

Deputy Signature: M. [signature]

Signature: [signature]

3

COUNTY OF OAKLAND

# OFFICE OF THE SHERIFF

MICHAEL J. BOUCHARD

## STATEMENT

Complaint #: 16-95135

Date & Time: ____________

Name: ____________ Date of Birth: ____________

Drivers License Number: ____________ Social Security Number: ____________

Address: ____________ City/State/ZIP: ____________

Home Ph: ____________ Cell: ____________ Work: ____________ Email: ____________

Statement: got back in the vehicle + we drove around the block & called the police

Signature: Kelly Prozi Deputy Signature: [signature]

BLDG 38 EAST • 1200 N TELEGRAPH RD • PONTIAC MI 48341-1044

COUNTY OF OAKLAND

# OFFICE OF THE SHERIFF

MICHAEL J. BOUCHARD

**STATEMENT**

Complaint #: 10-95132

Date & Time: 8-23-10 1245hrs

Date of Birth: [redacted]

Name: Kelly Priza

Drivers License Number: P620465010797 Social Security Number: [redacted]

Address: [redacted] City/State/ZIP: [redacted]

Home Ph: [redacted] Work: Email: [redacted]

Statement: Around 5pm we were waiting for A reposession 2 come to Sears Essentials the vehicle Showed Dropped of the Debtor & Drove off we Knew it was the unit we were looking 4 because we had the paper work So we followed the truck it drove (S) on Rochester Rd. to Hamlin turned (E) to Dequindre we were nervous that he noticed us So we went straight into 7-11 did A loop around & headed (S) on Dequindre Seen him turn Followed him 2 his home Mike got out of the car walked up 2 Debtor & Told him it was a reposession & put the paper up & the man Drew A Gun & Said I'll Shoot you The Agent (Mike) turned Around & walked back 2 the Car & the man had the gun drawn the whole time & Said "I'll Shoot your head off So he

Signature: Kelly Priza

Deputy Signature: M. [illegible]

BLDG 38 EAST • 1200 N TELEGRAPH RD • PONTIAC MI 48341-1044

# REPO MADNESS

## HOW AUTOMOBILE REPOSSESSIONS ENDANGER OWNERS, AGENTS AND THE PUBLIC

March 2010

NCLC®
NATIONAL CONSUMER LAW CENTER®

## ABOUT THE AUTHORS

**John W. Van Alst** is a staff attorney at the National Consumer Law Center and an expert on automobile fraud and finance issues.

**Rick Jurgens** is an investigative reporter and advocate at the National Consumer Law Center.

## ACKNOWLEDGMENTS

The authors would like to thank Leah Plunkett of the National Consumer Law Center for her contributions, ideas and helpful comments; Carolyn Carter and Jon Sheldon of NCLC for their valuable guidance, feedback and editorial assistance; Julie Gallagher for designing and formatting the report and its accompanying graphics and tables; Tamar Malloy of NCLC for her research and editorial review; and everyone else who kindly shared with us information, ideas and opinions.

NCLC®

NATIONAL CONSUMER LAW CENTER®

## ABOUT THE NATIONAL CONSUMER LAW CENTER

The National Consumer Law Center®, a nonprofit corporation founded in 1969, assists consumers, advocates, and public policy makers nationwide on consumer law issues. NCLC works toward the goal of consumer justice and fair treatment, particularly for those whose poverty renders them powerless to demand accountability from the economic marketplace. NCLC has provided model language and testimony on numerous consumer law issues before federal and state policy makers. NCLC publishes an 18-volume series of treatises on consumer law, and a number of publications for consumers.

7 WINTHROP SQUARE, BOSTON, MA 02110 ■ 617-542-8010 ■ WWW.CONSUMERLAW.ORG

# SUMMARY

Every day thousands of cars are taken from owners without court review or the involvement of law enforcement. Most of those takings are done by unlicensed individuals, including some convicted criminals. All too often these takings create encounters that result in trauma or injury. In at least six instances since 2006, self-help repossessions resulted in a death.

Nearly 2 million self-help repossessions occurred in 2009. Not surprisingly, when the taking of an item so essential to a family's success is conducted by unregulated entities, reports of incidents in which individuals are killed, injured or traumatized appear with disturbing regularity. The list of victims includes automobile owners, repossession agents, innocent bystanders and, on some occasions, infants or children.

Self-help repossession makes automobile loans dangerous—especially for low-income consumers and others who purchase cars from "buy here pay here" dealer-lenders who promise easy terms but frequently resort to tough tactics to extract payments from borrowers.

In just the past three years, the publicly reported toll from self-help repossessions is shocking. Six deaths. Dozens of injuries and arrests. Pistols, rifles, shotguns, knives, fists and automobiles wielded as weapons. And, in at least three cases, repo agents towed away automobiles with children under the age of 9 inside.

When such events occur they are often dismissed as isolated incidents or blamed on individual repo agents or the consumers. Viewed together however, this long list of violent or disruptive episodes shows basic flaws in the present system for automobile repossessions. There is an urgent need for states to extend to automobile owners the basic legal protections that limit the takings of important personal property, including due process protections and requirements that takings be executed by authorized, trained and responsible law enforcement officials.

Automobiles are vital to the prosperity and survival of many American families. As more people live in suburbs, fewer live within walking or biking distance of their jobs.[1] Automobile travel is also necessary for shopping, medical and other important services, and for parents to take their children to and from childcare. Unfortunately, in many areas, public transportation is currently inadequate to meet these needs.

State laws have not kept pace with the increasingly important role that cars play in our society and fail to treat cars as essential to family survival and success. Instead, current laws which permit private actors to take the property of another invite lawlessness and violence. Car dealers and lenders who choose to seize cars as collateral are not required to obtain a court order or typically involve or even notify law enforcement. Instead, a lender makes a unilateral decision to take a car. Often, the lender then hires unregulated, untrained and unreliable repo men to do the job.

Self-help repossession stacks the deck in favor of lenders and dealers. They regularly seize cars without having to prove or even substantiate their claims. They also use the threat of repossession to force consumers to comply with claims that may be mistaken, miscalculated or totally fabricated. Such tactics are especially common among "buy here, pay here" dealerships that both sell cars and make loans.

Because self-help repossession does not require a lender to go to court to show it should be allowed to take a car, a car owner usually faces the daunting prospect of bringing a court action after repossession to show he or she is entitled to get their own car back. Without any procedure to ensure due process prior to repossession, a car owner has no opportunity to assert claims or defenses that might entitle him or her to keep possession of the car. Working families, typically without access to a lawyer, often are unable to initiate a court case on their own to get back a repossessed car. Too often, a family is left without a car and unable to afford a replacement.

The current system, unfair to families subject to repossession, also endangers repo agents, other car owners and bystanders. With most repossessions occurring without the involvement of law enforcement, parties often assert their rights in a sort of vigilante justice. Coupled with a surprising lack of regulation—most states don't even require that repossession agents have licenses, bonds or special training—consumers, repo agents, the general public and even innocent children are all subjected to needless property damage, injuries and, in some tragic cases, death.

# REPO MADNESS

## HOW AUTOMOBILE REPOSSESSIONS ENDANGER OWNERS, AGENTS AND THE PUBLIC

## TABLE OF CONTENTS

| | | |
|---|---|---|
| I. | "Frightened to Death" | 4 |
| II. | Can They Really Do That?! | 5 |
| III. | Cars and Conflicts | 8 |
| IV | Americans and Cars | 9 |
| V. | Repossession: No License Required | 12 |
| VI. | A Corporate Model? | 13 |
| VII. | Agenda for Reform | 16 |
| VIII. | Conclusion | 17 |
| | Notes | 18 |
| | Appendix I: Incident Chart | 21 |
| | Appendix II: Repossession Laws by State | 27 |

## I. "FRIGHTENED TO DEATH"

The encounter was anything but accidental.

It began on May 18, 2007 when 17-year-old Michael Simeone drove his 1997 Saturn Coupe to the police station in East Bridgewater, Mass., a bedroom suburb south of Boston, to drop off paperwork describing a car he was looking for in order to repossess it. Riding along with Simeone were his 20-year-old brother Robert and four teenaged boys.[2]

The Simeone brothers, who both worked in their father's repossession business, were searching on a rainy evening for a 2000 Ford Focus that 25-year-old Sara Bradley had purchased three months earlier. Bradley, who had just emerged from bankruptcy, had used her tax refund to make the $1,500 down payment on the Focus at a local "buy here pay here" dealer called Crown Auto Sales. When Bradley fell behind on her payments, Crown's sales manager Jim Stuart engaged South Shore Auto Recovery, the firm owned by the Simeones' father, to repossess it.

The Simeones found the Focus as Bradley was driving it away from the home of her boyfriend's parents. Bradley's boyfriend was also in the car, as was the couple's 5-year-old daughter. What happened next was a scary and dangerous encounter that demonstrated dangers inherent in the current system of self-help repossession.

Michael Simeone, the youthful repo man, gave police this account: Simeone pulled his car up behind Bradley's and began flashing his high-beams. When Bradley pulled over to the side of the road and stopped, Michael Simeone also stopped. He then approached the car and reached through Bradley's partially rolled down window to hand her some paperwork and to try to shift the car into park. When Bradley drove off, Simeone drove after her. When she stopped for a red light, Robert Simeone Jr. got out and stepped in front of Bradley's car. Bradley then drove off, and the older Simeone brother jumped on the hood of her car and stayed on it until she arrived at the Abington police station.

The account by Charles Murphy, Bradley's boyfriend, included some more disturbing details: When Bradley first pulled over, a boy ran up to her car, pulled open the door and said "We're taking your car, and you're going to jail." The boy then tried unsuccessfully to pull Bradley from the car and punched her in the face. At the red light, another boy jumped out of the pursuing car and pounded on the hood screaming and swearing.

Sgt. Kevin Force, the Abington police officer who attempted to sort out the matter in a rain-drenched parking lot outside his station, wrote a report that registered his impression of the encounter. As the Simeones approached her car, Force wrote, Sara Bradley was "probably frightened to death."

The experience of Bradley and her family, while unusual, was hardly unique. Lenders, creditors and their agents took about 1.9 million cars from their owners during 2009, according to one industry estimate.[3] A single web-based software provider to repossession firms reported that in 2008 it handled 3.1 million repossession work orders that resulted in 1.3 million repossessions.[4]

Many of the autos that were repossessed had been sold by "buy-here, pay-here" used car dealers like Crown Auto, the dealership on a busy suburban corner where Bradley had purchased her Focus. And many of the repossessions were done by small operators, like South Shore, in one of the 33 states that, like Massachusetts, require no licensing,

SALES
THIS DEALER
CAN FINANCE
ANYONE!
GUARANTEED
ON
THE
LOT

registration, training or screening of the firms or individuals that repossess automobiles.

The repossession of the car carrying Bradley, her boyfriend and their five-year-old daughter by a 17-year old repo man with four companions did not violate Massachusetts laws, according to the jury that acquitted the Simeone brothers on charges of assault with a deadly weapon and disorderly conduct. But even if they had been convicted, the Simeones would not have been precluded by Massachusetts state law from carrying out future repossessions. In fact, both the elder Simeone, who owns South Shore Auto Recovery, and his older son had several previous criminal convictions at the time that South Shore was hired to repossess Bradley's car.[5]

Amazingly, Massachusetts, like most states, doesn't prohibit convicted felons or violent offenders from owning, operating or being employed in repossession businesses. Convicted felons can legally undertake the sensitive and dangerous task of seizing the collateral from automobile owners who have fallen behind in making their payments.

That's how it should be, according to Robert Simeone Sr. "People change," he said. "I paid my debt to society." All of his convictions sprang from an incident in which he broke out the window of his ex-wife's boyfriend's car or other events in his personal life, and none related to his repossession business, he said. He added that he had been assaulted while doing repossessions: "It also takes a guy with a tough skin to do the job."

But being the target of a repossession by a "tough" repo man can be terrifying. As Sara Bradley told a local newspaper about her encounter with the youthful repo men: "It was exactly like a car-jacking."

## II. CAN THEY REALLY DO THAT?!

Self-help repossession. It's remarkable on its face.

When a lender decides that a car owner has defaulted on a loan, by missing a payment or violating some other term of a loan agreement, that lender can unilaterally seize the car from its owner, and sell it. No formal judicial process is required. Nor is the lender required to bring in a law enforcement agency or agent to execute that seizure.

So when Sara Bradley fell behind on her auto loan from Crown Auto, she fell into a bind similar to that experienced by millions of Americans each year. Bradley's journey into deep financial straits included several years working in the office of a local Infiniti dealer.[6] Unwise or unlucky auto purchases contributed to her woes. She found herself owing $34,000 on the lease on a 2004 Infiniti G-35 that was valued at $24,000. She also owed $28,400 in payments on a 2002 Ford Explorer that had been stolen. According to her court filing, her insurance company had refused to reimburse her for that loss.

So in 2005, with her checking account empty and her 401(k) down to $200, Bradley paid a local attorney $1,000 to help her use bankruptcy to dig out of a $73,000 financial hole, much of it auto debt, that threatened to swallow all of her monthly income of $2,750. After she emerged from bankruptcy, Bradley bought a car from Crown. And after she fell behind on her payments, Crown dispatched Simeone to repossess that car. (See chart, p. 23.)

That's how things work in the system of self-help repossession. At any time a lender can unilaterally declare a borrower is in default and decide to seize the collateral. A few states require advance notice to the owner who is alleged to have defaulted. More allow the owner a few days to catch up on the loan. But beyond that, few laws apply. As a result, auto repossession remains a crude, unregulated and naked exercise of force and guile, limited in most states only by a vague prohibition that seizures not "breach the peace."

A Wisconsin law passed in 2006 added the last remaining holdout to the roster of states that allow self-help repossession of automobiles. Wisconsin's requirement that a court order be issued prior to each repossession was replaced with a requirement that a borrower receive 15 days advance notice of a

## Limiting Landlords, A Positive Lesson

While the violence and trauma that can result from self-help repossession of a car may seem shocking, it was not so long ago that similar abuses were common when landlords confronted tenants.[7] The idea of permitting secured lenders and landlords to use self help to take, or retake, property can be traced back to the dark ages. Lenders and landlords were permitted to take action without judicial process because of the weakness of the legal system.[8] In the nineteenth and twentieth centuries there was growing concern that tenants might be unfairly dispossessed of their homes or, even if the landlord was entitled to possession, that the use of self-help to retake the property would lead to violence.[9]

Defenders of landlord evictions cited the same arguments of historical precedent, cost, efficiency, and fairness that are now cited to support self-help repossessions on behalf of auto dealers and lenders.[10] Today, in landlord-tenant disputes, these rationales have been discredited and discarded. All 50 states have established "a judicial procedure called 'summary process' for evicting tenants who have violated terms of their leases or whose leases have expired."[11] While in some states the existence of summary process has not been construed to nullify landlords' right to self-help eviction provided at common law,[12] the clear preference,—as expressed through legislative and judicial action—is now for summary process to be landlords' "exclusive remedy."[13]

And summary process works. It can be efficient,[14] less costly for society as a whole than landlord self-help repossession,[15] and allow a court to determine the parties' rights. Most importantly, summary process has reduced the threat that violence might erupt when landlords, rather than law enforcement personnel specially trained to handle high conflict situations while repossession and the option of going to court to challenge the proceeding. The change in Wisconsin law culminated a campaign backed by the Alliance of Automobile Manufacturers, General Motors, the state Automobile and Truck Dealers Association and the state Financial Services Association.[16]

Beyond Wisconsin, consumer protections for auto owners facing repossessions remain rare and weak. Self-help repossession safeguards include requirements that a repossession agent pay a fee (Louisiana), have in hand a copy of the security agreement in which the seized car is collateral (Missouri), notify local police (Connecticut and a number of other states), stay off private property (Massachusetts) or get a permit to move the seized car out of the county in which the title was granted (Montana).

While no state requires court action prior to a self-help repossession, the rules in 10 states prohibit repossession until after a debtor has been notified of his or her right to "cure" or pay off the delinquent balance: Colorado, Iowa, Kansas, Maine, Massachusetts, Missouri, Nebraska, South Carolina, West Virginia, Wisconsin.

Because self-help repossession is legal in all 50 states, few repossessions follow court actions. With the ability to repossess on a whim, dealers and lenders can use repossessions not simply as a means of retaking collateral when a debtor defaults. Lenders can also use the threat of repossession to intimidate consumers. For example, the prospect of having a car seized can be used to keep a consumer from asserting the right to withhold payment for a warranty violation or other breach of contract in the sale of the car or the right to revoke acceptance of a car with substantial defects.

preserving public safety, go into tenants' homes and ask them to leave.

For example, a case study of evictions of tenants in New Haven, Conn., found that "incidents of resistance and violence are surprisingly rare."[17] The study concluded that "granting the state a monopoly of power and excluding the landlord from the removal effectively limit the violence at the end of this high-stakes process."[18] Indeed, central to the decisions by judges and legislators to forbid landlords from engaging in self-help repossession was a "growing sense that landlord-tenant confrontations often lead to violence. . . ."[19]

The recourse to violence in the face of repossession of a dwelling is not surprising. Tenants facing eviction, and the loss of their homes and a humiliating ejection from their neighborhood or community, may react with desperation, anger and aggression.[20]

Consumers facing repossession of their cars also have much at stake. Without a car, a low-income family may be unable to take children to daycare, commute to work or visit the doctor. With the prospect of such hardships and indignities looming, self-help repossession has a high potential for violence that can only be curbed by guaranteeing car owners a day in court and placing responsibility for repossession in the hands of law enforcement rather than private parties.

The evolution of landlord-tenant law demonstrates that judicial process can reduce the threat of violence and trauma, and do so without causing other ills (such as inefficiency and higher costs) to materialize. Unfortunately, states have failed to extend into the realm of automobile repossessions the same basic protections—a requirement for judicial process and that takings be done by law enforcement—that have reduced violence in face-offs between landlords and tenants.

— Leah Plunkett,
National Consumer Law Center staff attorney

Beyond the threat of repossession looms another menace: the prospect that a tough or unscrupulous repossession agent may be sent to take a car, and that an encounter may become traumatic or violent. Because private repossession agents are not sheriffs, police officers or other law enforcement officials, many lack training, authority and accountability. In 33 states, repossession agents require no licensing, registration, training or screening of the firms or individuals.

With few economic or legal barriers to entry, the ranks of the repossession army are wide open to individuals without the resources, qualifications or ability to pass criminal records checks needed for more attractive jobs.

See the table *Repossession Laws by State* on page 27 in the Appendix.

## III. CARS AND CONFLICTS

Without laws, judicial proceedings or licensing requirements to protect consumers from abuses by creditors and their agents, repossessions can plunge participants and bystanders into violent and frightening encounters.

Over the past three years, two agents and four auto owners were killed in repossession-related incidents, according to news and police reports. Dozens of other repossessions resulted in injuries or arrests. In three incidents, children ranging in age from 9 months to 8 years old were towed away in repossessed cars or trucks.

Self-help repossession poses a threat to consumers in every state. While working families and financially pressed consumers face the greatest danger of losing an automobile in a violent, mistaken or unnecessary seizure of collateral, the danger extends further. Anyone who has a loan secured by their automobile could be hurt if their lender mistakenly or maliciously decides to seize their car. And literally anyone can be drawn into this vortex of violence.

Mistaken identity led to the tow-away of two boys, ages six and 10 in an incident on the night of Feb. 6, 2003. An employee of a Texas repo firm hooked up a white 2003 Ford Expedition belonging to Carlos Chapa. But the repo man had been sent for a white 2002 Ford Expedition belonging to Chapa's sister. After hooking the wrong SUV up to his tow truck, the repo man drove away with Chapa's two sons, aged 6 and 10, inside.[21] Only after noticing that the engine was running in the repossessed SUV did the repo man discover the children, and return them to their tearful mother.

Three years later, an incident in a suburb of Washington, D.C., illustrated the collateral damage that the system of self-help repossession can inflict upon an automobile owner who is not even in a dispute with a lender. In that case, a 36-year-old man was shot to death by car thieves after police dispatchers refused to respond to his 911 call because they assumed that a self-help repossession was underway.

The tragic incident began early in the morning of Oct. 13, 2006, when a hip hop music producer named Raymond Scott Brown was awakened by the sounding of the alarm in his 2005 Chrysler 300, which was being hooked up to a tow truck.[22] Brown called police to report the theft but, instead of sending help, one of the operators asked twice whether Brown was late on his payments and whether the car was being repossessed instead of stolen. After barely a minute of conversation, the 911 operator told Brown to "call back within two hours" to find out which tow company had taken his car and why.[23]

But Brown and his wife were reluctant to sit tight while their car was being towed away.

So they got in her car, drove after the tow truck and found Brown's car, stopped by the side of the road and still hooked up to the tow truck. They pulled over, and Brown got out of his wife's car and approached the tow truck operator to tell him he had made a mistake. But before Brown could attempt to explain the situation, a pistol shot struck him in his chest and mortally wounded him. As his wife rushed to his side, the tow truck drove off—with Brown's car still attached.

Brown's death resulted in the filing of a murder charge against the alleged shooter. Two other men pled guilty to lesser charges stemming from the incident. In addition, police dispatchers were disciplined for their actions on the night of Brown's death. Two received four-day suspensions for their responses to 911 calls from Brown and a neighbor, and a supervisor received a written reprimand.[24]

The workings of the system of self-help repossession became an issue as Brown's widow pressed harder for justice. She filed a wrongful death lawsuit that included among the defendants Prince George's County and its homeland security director. The lawsuit alleged that the dispatcher's inquiries about Brown's payment history and failure to immediately send police resulted from discriminatory policies toward predominantly African-American communities.

In dismissing Brown's widow's lawsuit, Judge Alexander Williams of the U.S. District Court for Maryland observed that the dispatcher's inquiry about the status of Brown's car payments was "reasonable and often anticipated when a caller tells emergency personnel that his car has been or is being towed." In other words, it made sense to assume that a car being towed was being repossessed!

The judge reached his conclusion despite a Maryland law that obligates a creditor to "immediately inform the police" when a car has been repossessed. After Brown's killing, Prince George's County adopted a rule requiring repossession agents to notify local police prior to taking a car.[25]

Violent, traumatic and destructive incidents stemming from self-help repossessions have occurred with disturbing frequency in recent years. This map shows the location of incidents since Jan. 1, 2007 that, according to news reports or court records, resulted in deaths, injuries, arrests or the taking of small children.

## IV. AMERICANS AND CARS

The United States is a sprawling country where millions of people must travel to shop, do errands, and go to work. A car is a matter of survival for most American families, especially if they have low incomes or live in rural areas. A recent survey by the U.S. Department of Transportation found that nine out of 10 adults commute to work using a personal vehicle.[26] Americans average four trips for a total of 40 miles each day. Most of those trips—about nine out of 10—are taken in one of the country's more than 200 million personal vehicles.[27]

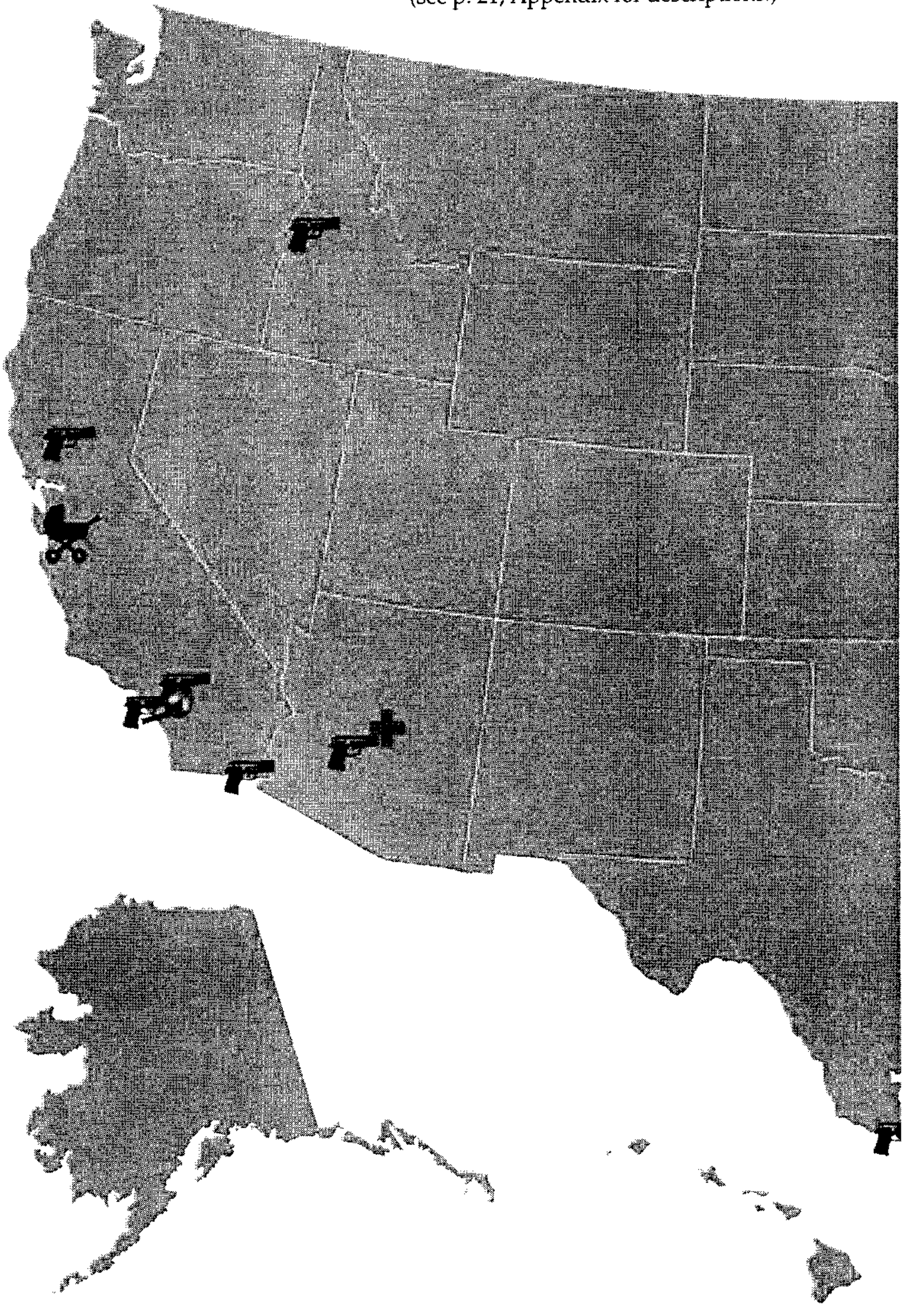
Families must buy cars, even in times of tremendous financial difficulty. So even as the recession and financial crisis wracked America in 2008, more than 36 million used cars and 11 million new cars were sold in transactions in which $643 billion changed hands.[28]

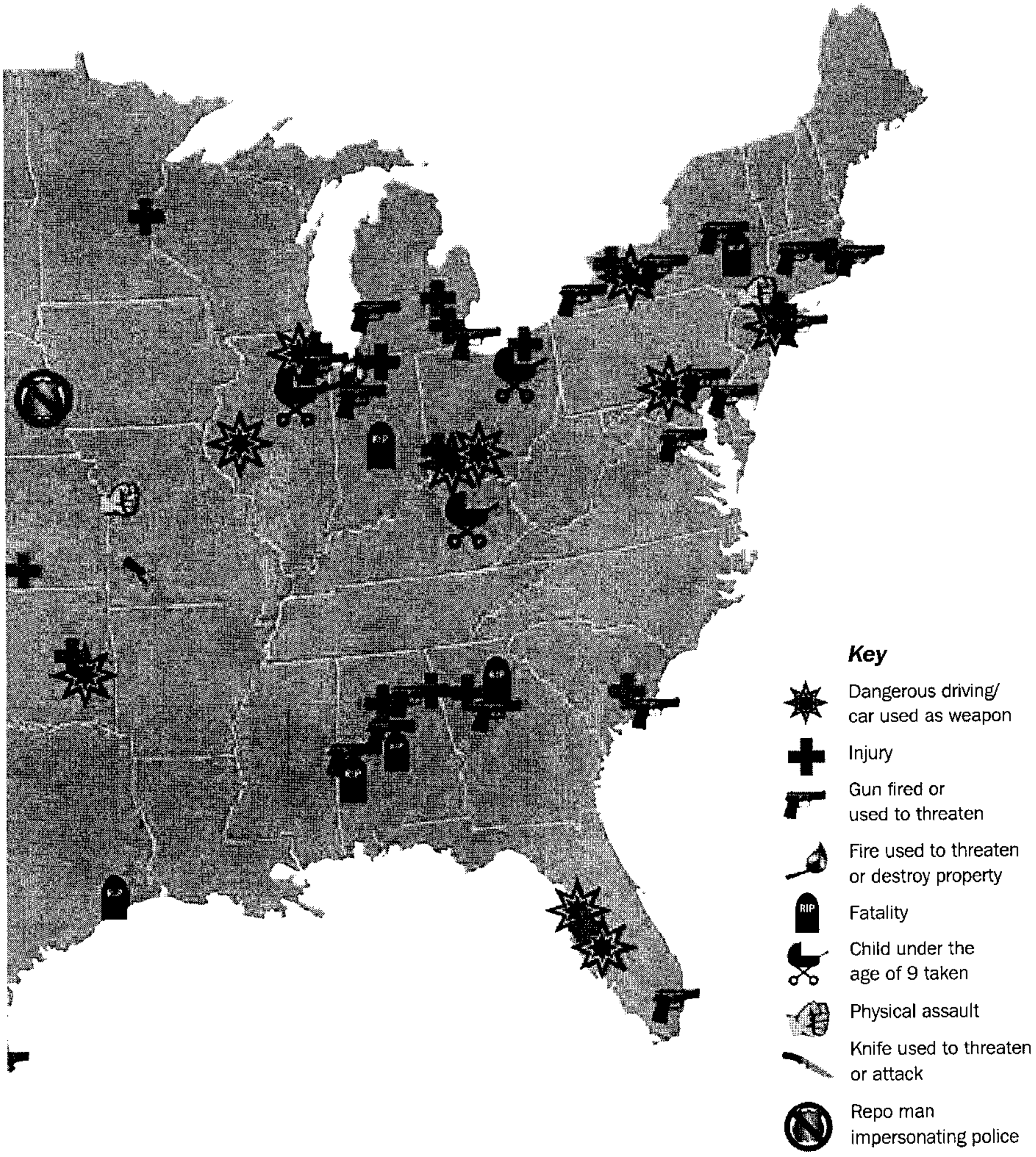
As many working families cannot afford to pay for a car outright, cars were often financed. Indeed, car loans constitute the largest item of non-mortgage consumer credit,

## ***Locations of Violent or Traumatic Repossession Incidents***

***since Jan. 1, 2007; including incidents that resulted in deaths, injuries, violence or the taking of small children.***

(see p. 21, Appendix for descriptions.)




Key
Dangerous driving/ car used as weapon
Injury
Gun fired or used to threaten
Fire used to threaten or destroy property
Fatality
Child under the age of 9 taken
Physical assault
Knife used to threaten or attack
Repo man impersonating police

## Buy Here, Pay Here

Mainstream auto lenders generally prefer to keep the threat of repossession in the background as a last resort, as repossession typically decreases the likelihood that the lender will be paid in full. However, "buy-here, pay-here" dealer-lenders put the threat of repossession front and center in lucrative business plans in which selling cars is secondary and collecting payments is the main job.

Buy here, pay here dealers target consumers who believe, rightly or not, that the results of credit checks or other items in their background will prevent them from securing more conventional means of financing a car. "We try to help people out," said Jim Stuart, who sold Sara Bradley her Ford Focus at Crown Auto.

That "help," extended to consumers who need or want a car and have nowhere else to turn, entails a close relationship between the dealer and the buyer. The buyer is expected to make weekly payments, typically in person, and collateral—the car—can be seized quickly when the dealer is dissatisfied with the buyer's performance.

The buy here pay here model is spelled out in financial filings from America's Car-Mart Inc., a Bentonville, Ark, company which describes itself as "the largest publicly held automotive retailer in the United States focused exclusively on the 'Buy Here/Pay Here' segment of the used car market."[29] Car-Mart says the average retail price of the 29,000 cars it sold in fiscal 2009 was a little over $9,000. Installment payments ran, on average, for 28 months.

"Collecting customer accounts is perhaps the single most important aspect of operating a Buy Here/Pay Here used car business and is a focal point for store level and corporate office personnel on a daily basis," the company says. "Substantially all associate incentive compensation is tied directly or indirectly to collection results." Despite those incentives, and close tracking of customers—a majority of Car-Mart's customers come in ahead of both credit card debts and student loans.[30]

And each car that secures a portion of this vast amount of consumer debt is at risk of repossession. So every family that depends on their car faces the frightening prospect of their car being taken by a lender that, rightly or wrongly, unilaterally decides to do so. This looming threat is often used to scare consumers into acquiescing to the demands of lenders.

## V. REPOSSESSION: NO LICENSE REQUIRED

Self-help repossession, by definition, introduces the prospect of violence, malice or error into the relationship between a lender and a car owner. Add a convicted felon, a teenager or an individual without training or even knowledge of the law into the repossession equation, and things can go terribly wrong. But few states have recognized this danger. Only a handful impose even minimal licensing requirements on the companies and individuals who carry out these property seizures.

A repossession agent must hold a state license or registration to legally seize automobiles in California, the District of Columbia, Florida, Hawaii, Louisiana, Maine, Maryland, Michigan, Nevada, New Mexico, Oregon, Pennsylvania or Washington. Illinois requires a repossession agent to hold a certificate and Colorado requires a bond but no license. General "business licenses" are required in Georgia and some local jurisdictions in Mississippi. In 33 out of the 50 states, no special license is required to carry out a self-help repossession.

The lack of legal and regulatory constraints has even generated concern within person to make weekly or bi-weekly payments—a substantial portion of the money never comes in. Uncollected payments exceeded 20 percent of the credit extended by Car-Mart in each of the last five years, and peaked at 29 percent in 2007.

Car-Mart's autos come from wholesalers, new car dealers, auctions and individuals. Car-Mart pays $3,000 to $6,000 each for cars that are between three and 10 years old with 90,000 to 130,000 miles. Popular models include the Ford Taurus and Escort, Chevrolet Lumina and Cavalier, Dodge Neon, Pontiac Grand Prix and Oldsmobile Cutlass. Using old, cheap cars as the raw material, Car-Mart has built a profit factory. In the fiscal year that ended in April 2009, the company posted $18 million in net income on revenue of $299 million. The company's 93 dealerships maintain an inventory of 25 to 100 vehicles, and turn it over 10 to 12 times a year.

Car-Mart boosts its revenue with financing plans in which annual interest rates averaged 11.5 percent in April 2009; five-month, 5,500-mile service contracts priced at $395 each and sales, to "substantially all" of its customers, of a "payment protection plan" that is supposed to kick in if the car is totaled or stolen.

the repossession industry. Among those who have spoken out is Joe Taylor, a Florida insurance agent who has worked as a repo man and developed a proprietary certification program for repossession agents that surveys relevant state and federal laws, elements of the repossession process, how to track down cars and owners, driving and insurance issues and paperwork.[31]

In a recent essay, Taylor described an industry wrenched by falling revenue and rising business expenses: "The costs of operating a professional collateral recovery business have increased drastically with $60,000 tow trucks, higher wage rates, fuel costs over $2 a gallon, expensive secure storage facilities, computerized offices, high-end key machines, rising insurance premiums, damage free auto 'entrance' tools and other expenses."[32]

At the same time, revenue has fallen, as prices for repossessions have been driven down by low-ball competitors that "failed to maintain the proper recovery insurance, provided no training to agents, used inferior equipment, had improper storage for collateral and personal property," Taylor wrote. "In order to meet quotas, inexperienced collectors intimidate agents and force them to take more unnecessary risks or face losing assignments."[33] A dozen insurance carriers have ceased covering repossession firms, even as conditions in the industry deteriorate, Taylor said in an interview.

## VI. A CORPORATE MODEL?

Change is underway in the repossession industry, fueled in part by growing awareness of the threats to public safety as well as crumbling economics of the current system of self-help repossession.

In recent years, a group of investors set out to "change the face of repossession" by buying up local and regional firms and creating a nationwide repossession corporation. That company—dubbed Renovo Services LLC—boasts the latest equipment, lower costs and a scope of operations that, its backers hope, will appeal to large lenders anxious to standardize, simplify and cut costs of repossessions.

Renovo also occasionally uses rhetoric about "professionalization" and better training for agents. However, this new business model for self-help repossession has failed to eliminate the threat of trauma, injury or death to consumers, agents or bystanders—as evidenced by a middle-of-the-night confrontation in rural Alabama in the early summer of 2008.[34]

Jimmy Tanks, a 67-year-old retired railroad worker, was shot and killed when he went to check on a noise in the middle of the night. A few days later, murder charges were filed against a Renovo agent who had come to repossess Tanks' car.

Authorities said that Kevin Alvin Smith, a repossession agent for an Alabama subsidiary of Renovo, had come with two assistants to repossess a 2005 Chrysler Sebring parked outside Tanks' home in the tiny, predominantly African-American town of Lisman. James Lovette, sheriff of Choctaw County, said in an interview that Tanks, whom he knew, got "killed over a durn car." Smith said that he shot Tanks in self defense.

Courts continue to sort through the events surrounding the killing of Tanks. Smith is awaiting trial on the murder charge. In November 2008 Tanks' widow filed a wrongful death lawsuit against Smith, Daimler Chrysler and Renovo's Alabama subsidiary.

Events similar to those that preceded the killing of Tanks occur in the lives of millions of Americans. Two weeks earlier, he had gotten married. Meanwhile, he had fallen behind on payments on the Sebring, which he had purchased used in February 2006 with a loan from DaimlerChrysler Financial. Tanks, who owed $10,400 on a car with a "loan value" of $7,400, according to an affidavit filed by an employee of DaimlerChrysler, sought protection from his creditors in a Chapter 13 bankruptcy in October 2007. He reported $36,000 in assets, $54,000 in liabilities and a monthly income of $2,200. In a plan that was confirmed on March 14, 2008, Tanks agreed to "surrender" the Chrysler. For reasons not clear from court records, Chrysler didn't get its car, and it sent Renovo to finish the job.

Renovo executives did not respond to requests for comment about the Tanks killing or their business plans. (See chart, p. 21.)

Renovo, which entered the repossession industry in 2005 by buying an existing regional repo company, describes itself as "the first powerfully financed and professionally managed repossession force operating as a single, direct entity."[35]

Renovo's business strategy aims to boost profits by taking advantage of greater scope and scale to cut costs, strengthen marketing and brand presence and step up investment in equipment and technology. If successful, that strategy could open the door for Renovo's owners to sell shares, or stock, publicly. Such initial public offerings can be extremely profitable to business owners, but are generally only an option if a business has established a track record of profitability or operates in a sector with prospects for rapid growth.

Renovo still has a way to go to hit that kind of a jackpot. The company employs more than 100 agents, and operates 40 "recovery lots."[36] The company says it has over 100 vehicles in "the largest company-owned fleet of repossession trucks . . . in the country," according to undated news release on its web site announcing the purchase of 26 new Ford F-350s.[37] Yet Renovo's reach remains unclear. Although Renovo's home page says "current coverage includes 33 states," an adjoining map shows repossession services coverage in only 16 southern, eastern and Midwestern states: Texas, Alabama, Georgia, South Carolina, North Carolina, Tennessee, Arkansas, Missouri, Illinois, Indiana, Kentucky, Ohio, Michigan, West Virginia, Virginia, Maryland and Delaware.[38]

Renovo promises auto lenders and dealers "the efficiency of dealing with one repossession company for all your assignments." It dismisses its competitors as nothing more than "a multitude of highly fragmented state, regional and 'mom and pop' companies." By comparison, Renovo says, its assignments stay "within our network of trained professionals, all operating in our new fleet of damage-free towing equipment." Renovo says its agents are well versed in investigative techniques as well as state, local and federal debt collection and banking laws.[39]

Documents filed in a lawsuit by 100 former Renovo "agents" paint a darker picture of Renovo's network. "The trucks simply need to roll more hours, and pick up more units," a Renovo regional manager said in a July 2007 email that urged 44 agents to bring back more vehicles: "Each of you have the ability to do WHATEVER it takes to pick up more cars."[40] The lawsuit alleges that Renovo violated federal labor law by paying hourly rates below the minimum wage and by misclassifying its repossession agents as independent contractors in order to avoid paying overtime premiums—even though they worked up to 90 hours in a week.[41]

The pressure to bring back as many autos as possible trumped all other considerations when working as a Renovo "agent," according to documents and statements submitted in the lawsuit. One email from a Renovo supervisor told agents to "insure that every one of our trucks are on the road a minimum of 12 hours a day."[42] Agents were expected to recover 20 vehicles a week. Those who fell short were ordered to keep their trucks on the road 22 hours a day for 7 days a week.[43] Some hired assistants or "apprentices" to help. Others shared trucks with other agents.[44]

Low pay added to the financial pressure on Renovo's repo agents. Some repo firms collect $300 or more for each repossession, according to news accounts. Renovo's agents received much less, according to documents filed in the lawsuit: a set payment for each recovery: $72.50 if the vehicle was surrendered voluntarily, and $110 if it wasn't. The company deducted "rental fees" from the payments to agents driving company-owned trucks: $10 in a voluntary surrender, and $40 for an involuntary.[45]

Unless or until the company decides to disclose more information in order to sell shares in the public market, it is hard to gauge from the outside just how much progress it has made in "changing the face" of the repo industry. Little of that change is evident on the semi-dormant Renovo web site, which has no news releases or job postings dated later than 2007.[46]

But there are signs that Renovo is continuing to lay the groundwork for future expansion. For example, since April 2009, it has registered as a corporation in several states in which its web site does not list operations, including Arizona, California, Louisiana, Rhode Island and Washington.

Meanwhile, members of Renovo's "network of trained professionals" have had a number of violent encounters as they went about their business of repossession. Besides the incident that resulted in the death of Jimmy Tanks, Renovo employees were involved in two other shooting incidents in Alabama, including one that resulted in a fatality. According to Renovo's web site, the company operates 10 recovery lots in Alabama.[47]

The first shooting occurred during the early hours of Jan. 8, 2009 when Renovo agent Jason McLendon was killed by a single shot to the head in the middle of the night in Birmingham as he and a partner drove off from an unsuccessful attempt to repossess a 2002 Cadillac DeVille. Police later filed murder charges against the brother of the owner of the car that McLendon, a married 28-year-old with a 3-year-old daughter, was trying to repossess.[48] (See chart, p. 21.)

Then, on Feb. 10, an unidentified assailant shot a bullet that struck the necks of two repo men working for Renovo and shot out a window of the F-350 pickup truck they were riding in. The repo men were searching in Birmingham for a vehicle to repossess and towing an F-150 that they had already taken.[49] (See chart, p. 21.)

Alabama's only existing state law on self-help repossessions prohibits breach of the peace, said Lovette, the Choctaw County sheriff. The state sheriffs' association has drafted a bill that it expects to be introduced in the Legislature. The bill would require repo agents to notify local police or sheriff and prohibit repossessions later than 9 p.m. Lovette said he recalled other repossession incidents, including one in which a repo man ran over a woman's barbecue grill. "It's not worth somebody getting killed, all the vehicles in the country."

## VII. AGENDA FOR REFORM

Automobiles play a crucial role in the daily life of most American families. For those living on low incomes or in rural or other areas not well served by public transportation, survival often depends upon the availability of a car.

So the extension of basic protections for consumers to their relations with automobile dealers and lenders is long overdue. The fundamental protection that should be enacted in each state is a requirement that secured lenders obtain court orders prior to seizing automobiles. In addition, such seizures, when authorized by courts, should be done by sheriffs, police or other law enforcement officials. Together, these simple measures would help ensure that borrowers with claims or defenses against lenders have their day in court, and rein in dealers and lenders who use the threat of arbitrary and sudden repossessions to bully consumers.

Most urgently, shutting down the current system of self-help repossessions without court review or the involvement of law enforcement could help reduce the chance that automobile seizures could kill, injure or traumatize consumers, repo agents or bystanders.

States that choose not to abolish self-help repossession must at least regulate a process that now stands ripe for abuses. Important restrictions that could help consumers include:

1. A requirement that an automobile owner receive formal notice of a lender's claim that a default has occurred, and have the right and opportunity to dispute that claim.
2. A requirement that whenever a repossession is authorized by a court or initiated by a creditor, an automobile owner receive a written notice that includes a description of the times, places and conditions under which the repossession may occur.

3. A requirement that a lender provide a car owner the right, for a set period, to cure a loan default by making any missed payments and paying reasonable late fees, and that the lender notify the owner of this right.
4. A rule making it clear that a prohibition on the breach of peace in a repossession requires that a repossession agent immediately discontinue the seizure whenever the car owner objects in any way.
5. Prohibition of a creditor's right to sell or dispose of a seized car until the passage of a set period (such as 15 to 20 days) during which the owner of the car has right to reinstate a loan and regain possession of the car by making late payments and paying reasonable late fees and repossession costs.
6. Strict licensing and bonding requirements for any private individuals who carry out repossessions, including a prohibition of repossessions by individuals with histories of serious criminal offenses or violence.
7. Clear liability by creditors for any bad acts by repossessors they have dispatched or engaged.

## VIII. CONCLUSION

Millions of American families own and depend upon automobiles. It seems unbelievable that the laws in most states allow lenders to, unilaterally and without legal action, repossess a car whenever they assert — rightly or wrongly, in good faith or as a bullying tactic— that a loan is in default.

The prospect of facing self-help repossession becomes more terrifying and dangerous when a lender or dealer dispatches an unlicensed agent—often without training or bonding, sometimes with a criminal record—to execute a seizure.

In its current state, the system of self-help repossession casts a shadow of violence and economic insecurity over millions of American households. Too often, that shadow materializes in a confrontation that results in trauma, injury or death.

That shadow can be removed only by restoring the responsibility and accountability of court review and law enforcement execution to the fundamentally flawed regime of self-help repossession.

# NOTES

[1] A recent survey by the U.S. Department of Transportation found that 91.2% of adults commute to work using a personal vehicle. U.S. Department of Transportation, Bureau of Transportation Statistics, *NHTS 2001 Highlights Report*, BTS03-05 (Washington, DC: 2003).

[2] Account of the May 18, 2007 incident and its aftermath from court records, interviews and news reports. Interviews with some involved in the incident can be viewed on YouTube at http://www.youtube.com/watch?v=R_61sM039_Q&NR=1 and http://www.youtube.com/watch?v=AzwhS0HJFCA.

[3] "2010 Used Car Market Report Examines Long-term Structural Shifts in Automotive Industry, Critical Role of Remarketing," release from Manheim Consulting, Feb. 13, 2010, posted on-line at www2.manheim.com/pdfs/press/20100213-2010-UCMR.pdf, viewed Feb. 16, 2010.

[4] See web site www.recoverydatabase.net/about-us viewed Nov. 25, 2009.

[5] Court records in Plymouth County, where Robert Simeone Sr.'s business is located, show convictions in 1995 and 1996 for assault and battery, threatening to commit a crime, violation of an abuse prevention order, malicious destruction of property, a civil rights violation, witness intimidation and larceny. Simeone's most recent convictions, for assault and battery and assault with a dangerous weapon, came in January 1999. Robert Simeone Jr., who leapt onto the hood of Bradley's car, also has a criminal record that includes convictions for assault and battery, threatening and drug distribution and possession.

[6] Information on Sara Bradley's financial troubles from filings in Chapter 7 bankruptcy 05-13921 in U.S. Bankruptcy Court Massachusetts.

[7] *See, e.g.*, Randy G. Gerchick, *No Easy Way Out: Making the Summary Eviction Process A Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. Rev. 759, 763, 858 (1994) (explaining that "[f]or several centuries the law of landlord and tenant remained relatively static, weighing heavily in favor of the landlord due to her superiority of estate; "[f]or most of this nation's history, landlords remained free to evict tenants at will"; and that self-help "seem[s] to provide an inexpensive means of regaining possession" by the landlord.).

[8] Wallace v. Chrysler Credit Corporation, 743 F.Supp. 1228 (W.D.Va. 1990) stating that *The origins of the self-help remedy for creditors as embodied in today's law go back to the Dark Ages. Self-help was tolerated because legal institutions were too weak to prevent it. . . . The remedy had been totally abolished by the time of the Norman Conquest, but the practical considerations involved in creditors' needs to protect their property caused its revival. See also* Entelman v. Hagood, 95 Ga. 390, 22 S.E. 545 (Ga. 1895).

[9] A discussion from a decision at the turn of the century by the Washington State Supreme Court illustrates these concerns and is useful in analyzing auto repossessions as well. *"But this rule, which makes the landlord a law unto himself, is not conducive to good business principles or to good order, and for that reason is not looked upon with favor. The statutes of this state (§ 5527, Bal. Code), provide a speedy, adequate, and orderly method for a landlord to obtain possession of his property upon failure of the tenant to pay rent, or upon failure to perform any other condition or covenant contained in a lease. These statutes we think should be held to provide an exclusive remedy, notwithstanding an agreement permitting possession to be taken by force."* Spencer v. Commercial Co., 30 Wash. 520, 71 P. 53 (1902).

[10] *See, e.g.*, Michael W. Dunagan, *Vehicle Repossessions and Resales Under Revised UCC Article 9: The Requirements and the Consequences of Non-Compliance*, 54 Consumer Fin. L.Q. Rep. 192, 193 (2000) (characterizing the "use of judicial process to recover collateral after default . . . [as] a costly and timeconsuming process" and "self-help repossession" as a "right of secured creditors that can be traced back to predate the English common law.").

[11] Michael D. Gottesman, *End Game: Understanding the Bitter End of Evictions*, 8 Conn. Pub. Int. L.J. 63, 68–9 (2009).

[12] William Lindsley, *Forcible Entry and Detainer*, 35A Am. Jur. 2d Forcible Entry and Detainer § 3 (2009).

[13] *See* Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 Cornell L. Rev. 517, 519, 538 (1984)

[14] "Landlords and tenants get to the final stage of evictions faster in the United States than they do in almost any other country." Gottesman, *supra* note 11 at 65.

[15] *See* Gerchick, *supra* note 7 at 858-89.

[16] "Measure would help creditors skip court; Repossessing cars could get easier once payments are 2 months overdue" by Paul Gores of the Milwaukee Journal Sentinel, page D1, March 28, 2006; "Governor vetoes rent-to-own bill" by Stacy Forster and Paul Gores, Milwaukee Journal Sentinel, page D1, March 31, 2006.

[17] Gottesman, *supra* note 11 at 86. One marshal has noted that "tenants get worked up much more often when the landlord appears at the removal," suggesting that removal is best left under the sole supervision of law enforcement. *Id.*

[18] Gottesman, *supra* note 11 at 97.

[19] Gerchick, *supra* note 7 at 764.

[20] *See generally* Gottesman, *supra* note 11 at 85 (stating that "the stakes are high" for tenants facing eviction).

[21] Opinion issued Oct. 9, 2008, Chapa, et al v. Traciers & Associates, et al., in Court of Appeals of Houston, Texas, 14th District, (267 S.W.3d386).

[22] Account of the Oct. 13, 2006 incident and its aftermath compiled from court records and news accounts.

[23] Transcript of conversation in Memorandum of Law in Support of Defendants Prince George's County, Maryland and Vernon R. Herron's Motion to Dismiss filed Dec. 10, 2008 in Danielle Steele Brown vs. Vernon R. Herron, et al 08cv2696 in U.S. District Court for Maryland Southern Division, p. 2.

[24] "Widow Criticizes 911 Action; Punishment Called Lenient, 'Hideous'" by Joshua Patlow in the Washington Post, Nov. 18, 2006, p. B1

[25] "Man's Shooting Death Prompts Notification Rule for Tow Trucks" by Rosalind S. Helderman in the Washington Post, Nov. 21, 2007, p. B4.

[26] U.S. Department of Transportation, Bureau of Transportation Statistics, *NHTS 2001 Highlights Report*, BTS03-05 (Washington, DC: 2003).

[27] U.S. Department of Transportation, Bureau of Transportation Statistics, "National Household Travel Survey 2001-2002," on file with authors.

[28] U.S. Department of Transportation, Bureau of Transportation Statistics, "New and Used Passenger Car Sales and Leases," on file with authors.

[29] Information on America's Car-Mart Inc. from Form 10-K filed July 14, 2009 with the U.S. Securities and Exchange Commission.

[30] "Auto Race to the Bottom- Free Markets and Consumer Protection in Auto Finance" (2009) Cambridge Winter Report available at http://www.cambridgewinter.org/Cambridge_Winter/Welcome_files/auto%20finance%20111609.pdf.

[31] See web site at www.riscus.com/education.htm, viewed Nov. 25, 2009.

[32] " The Industry's Beginnings" by Joe Taylor posted Aug. 8, 2008 on procra.com/article477.html, viewed Nov. 25, 2009.

[33] "The Industry's Beginnings" by Joe Taylor posted Aug. 8, 2008 on procra.com/article477.html, viewed Nov. 25, 2009.

[34] Account of the death of Jimmy Tanks from a Feb. 27, 2009 story by Associated Press writer Jay Reeves and from filings in Chapter 13 proceedings 07-13010 in U.S. Bankruptcy Court Southern District of Alabama Selma Division.

[35] See web site at www.renovoservices.com/index.aspx, viewed Nov. 25, 2009.

[36] See Defendants Amended Answer to Plaintiffs' Collective Action Amended Complaint filed Aug. 7, 2008 in Gentrup et al vs. Renovo Services LLC et al, 2007cv430 in U.S. District Court, Southern District Ohio, Western Division, p. 6.

[37] See news release posted at www.renovoservices.com/news/RENOVO%20Expends%20our%20Fleet%2010-3-06.pdf.

[38] Web page at www.renovoservices.com/Index.aspx viewed Nov. 25, 2009.

[39] Web pages at www.renovoservices.com/Index.aspx and www.renovoservices.com/About.aspx, viewed Nov. 25, 2009.

[40] Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Conditional Certification filed Nov. 21, 2007 in Gentrup et al vs. Renovo Services LLC et al , 2007cv430 in U.S. District Court, Southern District Ohio, Western Division, Hicks Exhibit 5.

[41] See Motion for Leave to File Second Amended Complaint filed Oct. 14, 2009 in Gentrup et al vs. Renovo Services LLC et al , 2007cv430 in U.S. District Court, Southern District Ohio, Western Division, p. 3; Exhibit A, p. 19.

[42] Plaintiffs' Reply to Defendants' Oppositoin to Plaintiffs' Motion for Conditional Certification filed Nov.

21, 2007 in Gentrup et al vs. Renovo Services LLC et al , 2007cv430 in U.S. District Court, Southern District Ohio, Western Division, Hicks Exhibit 4.

[43] See Plaintiffs Motion for Conditional Certification filed Sept. 26, 2007 in Gentrup et al vs. Renovo Services LLC et al, 2007cv430 in U.S. District Court, Southern District Ohio, Western Division, p. 4.

[44] See Plaintiffs Motion for Conditional Certification filed Sept. 26, 2007 in Gentrup et al vs. Renovo Services LLC et al, 2007cv430 in U.S. District Court, Southern District Ohio, Western Division, p. 4.

[45] See Plaintiffs Motion for Conditional Certification filed Sept. 26, 2007 in Gentrup et al vs. Renovo Services LLC et al, 2007cv430 in U.S. District Court, Southern District Ohio, Western Division, p. 9-10.

[46] See web pages www.renovoservices.com/Careers.aspx and www.renovoservices.com/News.aspx, both visited Jan. 25, 2010.

[47] See www.renovoservices.com/Coverage.aspx, map for Alabama.

[48] See "Defendant says repo man's death was an accident" by Eric Velasco in the Birmingham News, Feb. 6, 2009, p. 1B and "Repo man shot dead; car owner's brother turns self in" by Jeremy Gray in the Birmingham News, Jan. 9, 2009, p. 1B.

[49] See "Repo man shot in the neck, listed as serious" by Carol Robinson in the Birmingham News, Feb. 12, 2009, p. 1A.

# APPENDIX I

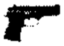
This chart was compiled from a survey of reports by newspapers and television stations that described repossession incidents since Jan. 1, 2007. The chart lists and summarizes those incidents that, according to a news report, resulted in death, injury or the arrest of someone involved or a bystander. It also lists and summarizes incidents in which a child under the age of 9 was taken. In some cases, the reports were supplemented by a review of court records.

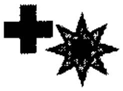
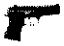
| LOCATION | MAP ICON | DATE | NARRATIVE, SOURCE |
|---|---|---|---|
| Birmingham, AL | | 2/10/2009 | See report pg. 16.<br>*Birmingham News story, 2/12/09* |
| Hoover, AL | | 6/4/2009 | A 29-year-old man was injured during an attempted vehicle repossession.<br>*Birmingham News (Alabama), 6/10/2009* |
| Lisman, AL | | 6/26/2008 | See report pg. 14.<br>*AP story, 2/27/09; Birmingham News (Alabama), 6/28/2009*<br>*The Virginian-Pilot, 2/28/2009* |
| Birmingham, AL | | 1/8/2009 | See report pg. 16.<br>*Birmingham News (Alabama), 1/9, 2/6/2009* |
| Mesa, AZ | | 11/6/2009 | A car owner was arrested after he allegedly approached a repo man who was taking the owner's car from a restaurant parking lot and took out a pistol that discharged after the owner used it to strike the repo man in the head.<br>*East Valley Tribune, 11/6/09, AP State & Local Wire, 11/7/2009* |
| Spring Valley, CA | | 6/30/2008 | A man was arrested after he allegedly fired a shot at a tow truck driver who was about to repossess his vehicle.<br>*San Diego Union-Tribune, 7/1/2008* |
| Yuba City, CA | | 12/12/2008 | A 48-year-old schoolteacher was convicted of assault and threatening, was sentenced to 90 days in jail and lost her teaching license after she pointed a gun at two repo men who had come to repossess her 1989 Mercedes Benz.<br>*Marysville Appeal-Democrat, 11/14/09, 8/14/09* |
| Highland, CA | | 3/17/2009 | Police executed a search warrant at the home of a 32-year-old man who was believed to have fled after he allegedly used a shotgun to take and drive away in a pickup truck being towed away by a repo man.<br>*San Bernadino County Sun (CA), 3/19/2009, 3/20/2009* |
| Fontana, CA | | 11/24/2009 | A 41-year-old woman was arrested on suspicion of arson after she allegedly used a lighter to set fire to the driver's seat of a Kia Optima as it was being repossessed.<br>*Inland Valley Daily Bulletin (Ontario, CA), 11/25/2009* |

| LOCATION | MAP ICON | DATE | NARRATIVE, SOURCE |
|---|---|---|---|
| Hemet, CA | | 12/2009 | A 45-year-old man was arrested on suspicion of assault with a firearm and negligent discharge of a firearm after he allegedly fired shots at a repossession agent.<br>*City News Service, 12/21/09* |
| San Jose, CA | | 1/12/2010 | A police helicopter and a dozen officers searched for half an hour for a 2-year-old boy whose mother had called 911 and reported him missing. Police found found the boy crying in the lobby of an automobile dealer who had repossessed the mother's 2000 Honda Accord after she was 17 days late in making her $285 monthly payment. The dealer told police that took the car but failed to notice the 2-year-old asleep in a car seat.<br>*San Jose Mercury News, 1/13/10, 1/19/10* |
| New Castle, DE | | 11/10/2009 | A 37-year-old man was charged with aggravated menacing and possession of a firearm during a felony after he allegedly pointed a handfun at a repo man who was repossessing a car.<br>*Wilmington News Journal, 11/10/09* |
| New Port Richey, FL | | 6/12/2009 | A 49-year-old man was charged with grand theft auto after he allegedly drove away in the tow truck that repossession agents were using to repossess two of his cars.<br>*Tampa Tribune, 6/12/2009* |
| Miami, FL | | 12/21/2009 | A man was arrested and charged with aggravated assault with a deadly weapon after he allegedly fired seven rounds into a tow truck being used by three repossession agents to repossess the arrested man's 1995 Chevrolet.<br>*Miami Herald, 12/22/09* |
| St Petersburg, FL | | 7/13/2007 | The 42-year-old owner of a 1995 Jeep Cherokee was run over and hospitalized in serious condition and a 44-year-old repo man was charged with reckless driving, leaving the scene of an accident involving injury and driving on a suspended or revoked license after the vehicle owner. The owner was injured after he reached in the window to try to grab the keys to his car as the repo man drove it away, police said.<br>*St. Petersburg Times 7/13/2007* |
| Atlanta, GA | | 11/12/2009 | A 29-year-old man was charged with murder, aggravated assault with a deadly weapon, possession of a weapon while committing a crime and running from police after he allegedly chased two repo men who were towing his 2004 Ford Mustang, ran them off the road and fired his shotgun, killing one and injuring another.<br>*UPI, 11/12/2009, Atlanta Journal-Constitution, 11/16/2009, 11/18/2009, 11/22/2009, 12/3/2009* |
| Genessee, ID | | 7/11/2009 | A 49-year-old man was charged with felony aggravated assault after he allegedly pointed a rifle at a repo man who was towing away his Chevrolet pickup truck.<br>*Lewiston Morning Tribune (Idaho), 11/21/2009* |

| LOCATION | MAP ICON | DATE | NARRATIVE, SOURCE |
|---|---|---|---|
| Aurora, IL | | 9/6/2007 | A four-year-old boy was injured when he jumped from a Ford Excursion being towed away by a pair of repo men.<br>*AP online, 9/9/07* |
| Chicago, IL | | 1/13/2009 | A 42-year-old man pled guilty to aggravated discharge of a firearm and was sentenced to 30 days in jail and 30 months of probation after he fired a gun at repo agents towing away his Isuzu SUV.<br>*Chicago Daily Herald, 4/2/2009, 1/31/2009* |
| Aurora, IL | | 8/25/2009 | A 35-year-old man was arrested and charged with aggravated fleeing or eluding police, driving more than 40 mph above the speed limit, concealment of collateral to avoid repossession, aggravated assault, reckless driving and driving without insurance after he allegedly drove away at up to 90 mph in an attempt to escape from repo agents and a police officer who came to repossess his 1997 Lincoln Town Car.<br>*Chicago Daily Herald, 8/27/09* |
| Clayton, IL | | 12/2/2009 | A man was charged with criminal damaging and his son was charged with assault after they **allegedly attempted** to prevent repossession of an SUV that repo men had already hooked up to a tow truck.<br>*Dayton Daily News (Ohio), 12/2/2009* |
| South Bend, IN | | 10/24/2008 | A 23-year-old repo man suffered a severe concussion and neck sprain and a 19-year-old man was charged with aggravated assault after he allegedly drove into a pair of repo men who were there to repossess his Chrysler 300M.<br>*South Bend Tribune, 10/26/2008, 11/1/2008* |
| Porter County, IN | | 9/29/2009 | A 31-year-old man was arrested after he allegedly threatened to use a blowtorch or to shoot two repo men who had come to repossess his 2007 Honda Odyssey minivan.<br>*Chicago Sun Times, 10/2/2009* |
| Greenwood, IN | | 7/6/2007 | A 63-year-old man was ejected from his car and killed as he fled an attempted repossession.<br>*www.theindychannel.com/print/13632591/detail.html* |
| Wichita, KS | | 8/11/2009 | A 37-year-old repo man suffered a bruised leg after a 34-year-old woman allegedly struck him with the 2001 Grand Prix he was attempting to repossess.<br>*Wichita Eagle, 8/12/09* |
| Nicholasville, KY | | 4/2008 | A 44-year-old repo man was charged with unlawful imprisonment and operating a vehicle without a valid license after he allegedly took a truck with the owner's 9-month-old, 2-year-old and 8-year-old children.<br>*Associated Press, 4/8/2008* |
| Kingston, MA | | 1/2/2008 | A 36-year-old car owner was charged with assault with a dangerous weapon, discharging a firearm within 500 feet of a home, threatening to commit a crime and improperly storing a firearm after he allegedly fired shots into the air and the ground in an effort to stop repossession of his Ford F-350.<br>*The Patriot Ledger (Quincy, MA) 1/4/2008* |

| LOCATION | MAP ICON | DATE | NARRATIVE, SOURCE |
|---|---|---|---|
| Aurora, IL | | 9/6/2007 | A four-year-old boy was injured when he jumped from a Ford Excursion being towed away by a pair of repo men.<br>*AP online, 9/9/07* |
| Chicago, IL | | 1/13/2009 | A 42-year-old man pled guilty to aggravated discharge of a firearm and was sentenced to 30 days in jail and 30 months of probation after he fired a gun at repo agents towing away his Isuzu SUV.<br>*Chicago Daily Herald, 4/2/2009, 1/31/2009* |
| Aurora, IL | | 8/25/2009 | A 35-year-old man was arrested and charged with aggravated fleeing or eluding police, driving more than 40 mph above the speed limit, concealment of collateral to avoid repossession, aggravated assault, reckless driving and driving without insurance after he allegedly drove away at up to 90 mph in an attempt to escape from repo agents and a police officer who came to repossess his 1997 Lincoln Town Car.<br>*Chicago Daily Herald, 8/27/09* |
| Clayton, IL | | 12/2/2009 | A man was charged with criminal damaging and his son was charged with assault after they **allegedly attempted** to prevent repossession of an SUV that repo men had already hooked up to a tow truck.<br>*Dayton Daily News (Ohio), 12/2/2009* |
| South Bend, IN | | 10/24/2008 | A 23-year-old repo man suffered a severe concussion and neck sprain and a 19-year-old man was charged with aggravated assault after he allegedly drove into a pair of repo men who were there to repossess his Chrysler 300M.<br>*South Bend Tribune, 10/26/2008, 11/1/2008* |
| Porter County, IN | | 9/29/2009 | A 31-year-old man was arrested after he allegedly threatened to use a blowtorch or to shoot two repo men who had come to repossess his 2007 Honda Odyssey minivan.<br>*Chicago Sun Times, 10/2/2009* |
| Greenwood, IN | | 7/6/2007 | A 63-year-old man was ejected from his car and killed as he fled an attempted repossession.<br>*www.theindychannel.com/print/13632591/detail.html* |
| Wichita, KS | | 8/11/2009 | A 37-year-old repo man suffered a bruised leg after a 34-year-old woman allegedly struck him with the 2001 Grand Prix he was attempting to repossess.<br>*Wichita Eagle, 8/12/09* |
| Nicholasville, KY | | 4/2008 | A 44-year-old repo man was charged with unlawful imprisonment and operating a vehicle without a valid license after he allegedly took a truck with the owner's 9-month-old, 2-year-old and 8-year-old children.<br>*Associated Press, 4/8/2008* |
| Kingston, MA | | 1/2/2008 | A 36-year-old car owner was charged with assault with a dangerous weapon, discharging a firearm within 500 feet of a home, threatening to commit a crime and improperly storing a firearm after he allegedly fired shots into the air and the ground in an effort to stop repossession of his Ford F-350.<br>*The Patriot Ledger (Quincy, MA) 1/4/2008* |

| LOCATION | MAP ICON | DATE | NARRATIVE, SOURCE |
|---|---|---|---|
| Leicester, MA |  | 1/5/2009 | A 38-year-old man was arrested and charged with assault with a dangerous weapon and armed robbery after he allegedly pointed a pistol at a repo man who was hooking his car up to a tow truck.<br>*Telegram & Gazette (Massachusetts) 1/8/2009* |
| Abington, MA | | 5/18/2007 | See report pg. 4.<br>*Boston Globe 5/23/07, Quincy Patriot Ledger 5/26/07* |
| Millersville, MD | | 11/28/2008 | A 33-year-old man was charged with two counts each of first- and second-degree assault and reckless endangerment and a count of disorderly conduct and a 46-year-old woman was charged with second-degree assault and disorderly conduct after the man allegedly pulled out a gun and the woman allegedly sought to grab the keys from the tow truck of two repo men seeking to repossess a vehicle.<br>*The Maryland Gazette, 12/3/2008,*<br>*The Capital (Annapolis, MD) 12/4/2008* |
| Cheshire Township, MI | | 9/3/2009 | A 48-year-old man was charged with four counts of assault with intent to do murder and four counts of assault with intent to do great bodily harm after he allegedly fired guns and chased in a pickup truck two repo agents who had repossessed his 2008 pickup.<br>*Grand Rapids Press (Michigain), 9/5/2009,*<br>*Kalamazoo Gazette (Michigan), 9/2/2009* |
| Flint, MI | | 9/2/2008 | A 62-year-old man injured his head when he fell to the ground after jumping on the back of a pickup truck being driven by a repo man who had just repossessed the 62-year-old man's car.<br>*Flint Journal (Michigan), 9/7/2008* |
| Detroit, MI | | 8/17/2009 | A 41-year-old man doing a repossession was shot in the head and chest by a man in a ski mask but escaped serious injury.<br>*Detroit Free Press, 8/18/09* |
| Chaska, MN | | 7/13/2009 | A man was charged with assault on a police officer after an officer was injured when the arrested man and others attempted to resist repossession of his vehicle.<br>*Star Tribune (Minneapolis, MN) 8/19/2009* |
| Excelsior Springs, MO | | 5/21/2009 | A 29-year-old man pled guilty to charges of unlawful use of a weapon and assault after an incident in which, while he was helping in the repossession of black Pontiac Bonneville, he grabbed a teen by the throat and dragged him from a green Pontiac Bonneville.<br>*KCTV5, July 23, 2009 (see clip at www.kctv5.com/video/20165335/ index.html ); case 09CY-CR01964-01, posted on-line at www.courts.mo.gov/casenet* |
| Springfield, MO | | 11/23/2009 | Two men, ages 61 and 29, were arrested, and the 29-year-old was charged with aggravated assault after he allegedly pulled a knife on two repo men who were trying to repossess a black Toyota.<br>*Springfield News-Leader, 11/25/09* |

| LOCATION | MAP ICON | DATE | NARRATIVE, SOURCE |
|---|---|---|---|
| Papillion, NE | | 2/20/2009 | A 39-year-old repo man was arrested on suspicion of impersonating a police officer, making terroristic threats and possession of marijuana and drug equipment after he allegedly pulled out a fake law enforcement badge and a BB gun as he tried to repossess a car.<br>*Omaha World-Herald, Feb. 24, 2009* |
| Brooklyn, NY | | 7/10/2007 | A 36-year-old car owner was charged with assault after he allegedly climbed into the cab of a repo man's tow truck and put his hands on the 44-year-old driver's neck.<br>*The New York Post, 7/11/2007* |
| Canarsie, NY | | 9/20/2007 | A 33-year-old man was arrested after he allegedly rammed his Mercedes Benz into a tow truck being used by a repo man in an attempt to repossess the Mercedes.<br>*The New York Post, 9/21/2007* |
| Seward, NY | | 10/14/2008 | A 32-year-old man was charged with second-degree menacing after he allegedly fired a rifle at two repo men who were trying to repossess his pickup truck.<br>*The Times-Union (Albany, NY) 10/16/2008* |
| Cheektowaga, NY | | 10/14/2009 | A 28-year-old man was arrested and charged with menacing and he and a 30-year-old woman were charged with criminal possession of marijuana and criminal possession of a weapon after the man allegedly threatened to shoot a repo man who had come for the arrested man's vehicle.<br>*Buffalo News (NY), 10/17/2009* |
| Syracuse, NY |  | 2/12/2007 | A 27-year-old woman was treated for a leg injury and a 43-year-old repo man was charged with reckless endangerment and harassment after the woman was dragged down the street by a tow truck trying to repossess her sister's 2000 Ford Windstar.<br>*The Post-Standard (Syracuse, NY) 2/13/2007* |
| Syracuse, NY |  | 7/2/2007 | A 37-year-old repo man was shot at during an aborted repossession and the 36-year-old owner of a car being repossessed was charged with reckless endangerment, criminal possession of a weapon and three counts of menacing.<br>*The Post-Standard (Syracuse, NY) 7/3/2007* |
| Staten Island, NY | | 10/8/2009 | A 59-year-old woman was charged with assault and a repo man suffered minor injuries after she allegedly jumped into a car that was being repossessed, drove it into the agent and then drove 10 blocks with the repo man hanging on the hood.<br>*Staten Island Advance, 10/10/09* |
| Rotterdam, NY | | 8/2/2007 | A 44-year-old man was killed when he was run over by the rear wheels of a tow truck being used to repossess his SUV.<br>*Albany Times-Union* |
| Silverton, OH | | 11/14/2009 | A 41-year-old man was arrested and charged with attempted vehicular assault after he allegedly struck a repo man with a car he was trying to repossess.<br>*Associated Press, 11/17/09* |

| LOCATION | MAP ICON | DATE | NARRATIVE, SOURCE |
|---|---|---|---|
| Cleveland, OH | | 9/2009 | A woman told a local televsion station that she was injured after she was dragged by a repo agent who allegedly towed away her car with her 4-year-old boy asleep in the back seat and abandoned it five miles away. *UPI, 9/23/09* |
| West Price Hill, OH | | 9/22/2009 | A 59-year-old woman was charged with felonious assault after she allegedly struck a repo man with her vehicle and injured his left ankle. *Cincinnati Enquirer, 9/25/09* |
| Muskogee County, OK | | 3/29/2008 | A repo man was hospitalized and a 47-year-old car owner was arrested and charged with assault with a dangerous weapon after he allegedly ran over the repo man in an effort to block a repossession. *Muskogee Phoenix, 3/31/08* |
| Lancaster, PA | | 5/2/2008 | A 32-year-old man was charged with making terroristic threats after he allegedly pointed a shotgun at two repo men preparing to tow his 2003 Chevrolet Tahoe. *Lancaster New Era (Pennsylvania), 5/2/2008* |
| Gettysburg, PA | | 7/10/2009 | A 21-year-old man was charged with theft, unauthorized use of an automobile, reckless endangerment, defiant trespass and criminal mischief after he allegedly rammed his pickup, which had been repossessed, into a tractor belonging to the repo man. *Hanover Evening Sun, 8/2/09* |
| Ridgeville, SC | | 6/28/2009 | A 49-year-old man was charged with assault and battery with intent to kill after he allegedly shot birdshot into the face and back of repo man who was repossessing the arrested man's pickup truck. *The Post and Courier (Charlseton, SC), 6/30/2009* |
| Brownsville, TX | | 8/19/2009 | A 53-year-old man was arrested and charged with two counts of aggravated assault with a deadly weapon after he allegedly pointed a shotgun at two repo men attempting to take his 2005 Chevrolet Silverado. *Brownsville Herald, 8/21/09* |
| Baytown, TX | | 6/23/2007 | A 53-year-old woman suffered a fatal head injury and police filed a manslaughter charge against a 34-year-old repo man who was trying to repossess a car on behalf of the woman's estranged husband. *www.khou.com, 7/6/07* |

## Key

- Dangerous driving/ car used as weapon
- Injury
- Gun fired or used to threaten
- Fire used to threaten or destroy property
- Fatality
- Physical attack
- Knife used to threaten or attack
- Repo man impersonating police
- Child under the age of 9 taken

# APPENDIX II

*Repossession Laws by State*

| STATE | LICENSING REQUIREMENTS FOR REPOSSESSION AGENTS | SPECIAL PROVISIONS | RIGHT TO CURE PRIOR TO REPOSSESSION | RIGHT TO REINSTATE AFTER REPOSSESSION |
|---|---|---|---|---|
| Alabama | | | None | None |
| Alaska | | | None | None |
| Arizona | | | None | None |
| Arkansas | | | None | None |
| California | Repossessors must be licensed with the Bureau of Security and Investigative Services (Cal. Bus. & Prof.. Code §§ 7500 to 7511 (West)) | | None for cars | Yes (Cal. Civ. Code §§ 1812.2 to 1812.3 (West)) |
| Colorado | Repossessor must file a surety bond with Col. Attorney General (Colo. Rev. Stat. § 4-9-629) | | Yes (Colo. Rev. Stat. §§ 5-5-110, 5-5-111) | None |
| Connecticut | | | Yes (Con. Gen. Stat. §36a-785) | Yes (Con. Gen. Stat. §36a-785) |
| Delaware | | | None | None |
| District of Columbia | Repossessors must be licensed with the Department of Consumer and Regulatory Affairs (D.C. Mun. Regs. tit. 16, Chapter 3) and post $5,000 bond | Repossession only with permission of the consumer immediately prior to repossession | Yes (D.C. Mun. Regs. tit. 16, §§ 340 to 343) | Yes (D.C. Mun. Regs. tit. 16, §§ 340 to 343) |
| Florida | Repossessors must be licensed with the Department of Agriculture and Consumer Services (Fla. Stat. § 493) | | None | None |
| Georgia | | | None | None |
| Hawaii | Repossessors are collection agents and must be licensed by Commerce and Consumer Affairs (Haw. Code R. § 443B) | | None | None |
| Idaho | | | None | None |
| Illinois | Those engaged in "Non-relocation towing" must obtain certificate from Ill. Commerce Commission (625 Ill. Comp. Stat. 5/Ch 18C) | Creditor must send notice of default and pending repossession and method to dispute repossesion | None | None for motor vehicles |

| STATE | LICENSING REQUIREMENTS FOR REPOSSESSION AGENTS | SPECIAL PROVISIONS | RIGHT TO CURE PRIOR TO REPOSSESSION | RIGHT TO REINSTATE AFTER REPOSSESSION |
|---|---|---|---|---|
| Indiana | | | None | None |
| Iowa | | | Yes (Iowa Code §§ 537.5110, 537.5111) | None |
| Kansas | | | Yes (Kansas Stat. Ann. §§ 16a-5-110, 16a-5-111) | None |
| Kentucky | | | None | None |
| Louisiana | Agents and agencies must be licensed by state Office of Financial Institutions (La. Admin. Code 10:XV.1301, et seq.) vehicles | | None | None for motor |
| Maine | Repossessors are debt collectors and must be licensed bythe Bureau of Consumer Credit Protection (Me. Rev. Stat. Ann. tit. 32 § 11031) | | Yes (Me. Rev. Stat. Ann. tit. 9-A §§ 5-110, 5-111) | None |
| Maryland | Repossessors are collection agencies and must obtain license from the Office of the Commissioner of Financial Regulation (Md. Code Ann,., Bus. Reg. § 7-101 et seq.) | | None | Yes (Md. Code Ann., Com. law §§ 12-624 to 12-625, 12-921, 12-1021, 12-115 (West)) |
| Massachusetts | | | Yes (Mass. Gen. Laws ch. 255, §13I; Mass. Gen. Laws ch. 255B, §20A; Mass. Gen. Laws ch. 255D, §21) | None |
| Michigan | Repossessors are collection agencies and must obtain license from the Department of Labor and Economic Growth, Bureau of Commercial Services (Mich. Comp. Laws § 339.901) | | None | None |
| Minnesota | | | None for motor vehicles | None |
| Mississippi | | | None | Yes (Miss. Code Ann. §75-9-623) |
| Missouri | | | Yes (Mo. Rev. Stat. §§ 408.554, 408.555, 365.145) | None |

| STATE | LICENSING REQUIREMENTS FOR REPOSSESSION AGENTS | SPECIAL PROVISIONS | RIGHT TO CURE PRIOR TO REPOSSESSION | RIGHT TO REINSTATE AFTER REPOSSESSION |
|---|---|---|---|---|
| Montana | | | None | None |
| Nebraska | | | Yes (Neb. Rev. Stat. §§ 45-150, 45-151) | None |
| Nevada | Repossessors must be licensed by the Private Investigator's Licensing Board (Nev. Admin. Code § 648) | | None | None |
| New Hampshire | | | None for motor vehicles | None |
| New Jersey | | | None | None |
| New Mexico | Repossesors must be licensed by the Financial Institutions Division of the Regulation and Licensing Department (N. M. Stat. § 61-18A-5) | | None | None |
| New York | | | None for motor vehicles | Yes (N.Y. Pers. Prop. Law §§ 302, 316 (McKinney); N.Y. Gen. Oblig. Law §7-401 (McKinney); |
| North Carolina | | | None | None |
| North Dakota | | | None | None |
| Ohio | | | None | Yes (Ohio Rev. Code Ann. §1317.12 (West)) |
| Oklahoma | General tow vehicles licensing applies (Okla. Stat. tit. 47, § 951 et seq.) | | | None None |
| Oregon | Repossessors are collection agencies and must register with the Department of Consumer and Business Services (Or. Rev. Stat. § 697.031) | | None | None |
| Pennsylvania | Repossessors must obtain a license from the Department of Banking and post a $5,000 Bond (69 Pa. Stat. §601) | | None for motor vehicles | None |
| Puerto Rico | | | None | None |
| Rhode Island | | | None | None |

| STATE | LICENSING REQUIREMENTS FOR REPOSSESSION AGENTS | SPECIAL PROVISIONS | RIGHT TO CURE PRIOR TO REPOSSESSION | RIGHT TO REINSTATE AFTER REPOSSESSION |
|---|---|---|---|---|
| South Carolina | | | Yes (S.C. Code Ann. §§ 37-5-110, 37-5-111) | None |
| South Dakota | | | None | None |
| Tennessee | | | None | None |
| Texas | | | None | None |
| Utah | | | None | None |
| Vermont | | | None | None |
| Virginia | | | Yes, but no notice required (Va. Code Ann. § 11-4.3) | none |
| Washington | Repossessors are collection agents and must be licensed by the Department of Licensing (Wash. Admin. Code WAC § 308-29) | | None | None |
| West Virginia | | | Yes (W. va. Code § 46A-2-106) | None |
| Wisconsin | | Creditor must send notice of default and pending repossession and method to dispute repossesion | Yes (Wis. Stat. § 425.105) | Yes (Wis. Stat. § 425.208) |
| Wyoming | | | None | None |

JS 44 (Rev. 12/12)

# CIVIL COVER SHEET

County in which action arose Oakland

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

## I. (a) PLAINTIFFS

KIMDON PETERS
1437 Lantern Lane
Rochester Hills, Michigan, 48307

**(b)** County of Residence of First Listed Plaintiff Oakland
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*

## DEFENDANTS

GREAT LAKES RESOVERY & REPOSSESSIONS, INC. et al
2147 Kenny Avenue
Warren, Michigan, 48091

County of Residence of First Listed Defendant Macomb
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF

Case:2:16-cv-12584
Judge: Rosen, Gerald E.
MJ: Grand, David R.
Filed: 07-11-2016 At 03:46 PM
CMP PETERS V. GREAT LAKES RECOVERY & REPOSSESIONS ET AL (DA)

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

## III. CI[...] [...]or Plainti[...] [...]and One Box for Defendant)

*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☒ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

## IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

**PRISONER PETITIONS**

**Habeas Corpus:**
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

**Other:**
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

**FORFEITURE/PENALTY**
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

## V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. § 1983

Brief description of cause:
Violation of U.S. Am's. 4, 5, 14, with Criminal Action while Collecting, Car Jacking, Home Invasion, Impicating Consumer in a Crime

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

**DEMAND $** 2,000,000.00

CHECK YES only if demanded in complaint:
**JURY DEMAND:** ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

*(See instructions)*: JUDGE Elizabeth A. Stafford DOCKET NUMBER 2:16-cv-12056

DATE July 11, 2016

SIGNATURE OF ATTORNEY OF RECORD
By. McKimdon Peters

**FOR OFFICE USE ONLY**

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: ______________________

Case No.: ______________________

Judge: ______________________

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: ______________________

Case No.: ______________________

Judge: ______________________

Notes :

# New Lawsuit Check List

**Instructions: Put a check mark in the box next to each appropriate entry to be sure you have all the required documents.**

☑ Two (2) completed **Civil Cover Sheets.**

☑ Enter the number of defendants named in your lawsuit in the blank below, add 2 and then enter the total in the blank.

4 + 2 = 6 **Complaints.**
(# of Defendants) (Total)

Received by Clerk: DA Addresses are complete: ✓

Case:2:16-cv-12584
Judge: Rosen, Gerald E.
MJ: Grand, David R.
Filed: 07-11-2016 At 03:46 PM
CMP PETERS V. GREAT LAKES RECOVERY & REPOSSESIONS ET AL (DA)

☐ If any of your defendants are **government agencies**:
Provide two (2) extra copies of the **complaint** for the U.S. Attorney and the Attorney General.

| **If Paying The Filing Fee:** | **If Asking That The Filing Fee Be Waived:** |
|---|---|
| ☑ Current new civil action filing fee is attached.<br><br>Fees may be paid by check or money order made out to:<br><br>***Clerk, U.S. District Court***<br><br>Received by Clerk: DA Receipt #: DET093883 | ☐ Two (2) completed **Application to Proceed in District Court without Prepaying Fees or Costs** forms.<br><br>Received by Clerk: ______ |

**Select the Method of Service you will employ to notify your defendants:**

| **Service via Summons by Self** | **Service by U.S. Marshal** (Only available if fee is waived) | **Service via Waiver of Summons** (U.S. Government cannot be a defendant) |
|---|---|---|
| ☑ Two (2) completed **summonses** for each defendant including each defendant's name and address.<br><br>Received by Clerk: DA | ☐ Two (2) completed **USM – 285 Forms** per defendant, if you are requesting the U.S. Marshal conduct service of your complaint.<br><br>☐ Two (2) completed **Request for Service by U.S. Marshal** form.<br><br>Received by Clerk: ______ | ☐ You need not submit any forms regarding the Waiver of Summons to the Clerk.<br><br>Once your case has been filed, or the Application to Proceed without Prepaying Fees and Costs has been granted, you will need:<br>• One (1) **Notice of a Lawsuit and Request to Waive Service of a Summons** form per defendant.<br>• Two (2) **Waiver of the Service of Summons** forms per defendant.<br><br>Send these forms along with your filed complaint and a self-addressed stamped envelope to each of your defendants. |

**Clerk's Office Use Only**

Note any deficiencies here: